



U.S. Department of Justice

*United States Attorney  
Eastern District of New York*

JJD  
F.#2010R00014

*United States Attorney's Office  
610 Federal Plaza  
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March 6, 2012

The Honorable Joseph F. Bianco  
United States District Judge  
United States District Court  
Eastern District of New York  
920 Federal Plaza  
Central Islip, New York 11722

Re: United States v. Acosta-Yanes et al.  
Criminal Docket No. 10-074 (S-4) (JFB)

Dear Judge Bianco:

As the Court is aware, there are ten remaining defendants in Group III in connection with the above-referenced matter. For the reasons set forth below, the government proposes dividing those defendants into two groups for trial.

Pursuant to a February 29, 2012 order from the Court, the government will notify the Court and defense counsel whether it will seek the death penalty against the defendants Jose Gustavo Orellana-Torres, Mario Alphonso Herrera-Umanzor, Heriberto Martinez, Vidal Espinal and Jeremias Exequiel Amaya before March 30, 2012. With respect to the remaining Group III defendants, Yonis Acosta-Yanes, David Valle, Louis Ruiz, Franklin Villatoro and Yobany Calderon, the government recently received the final mitigation submission and is in the process of updating its death penalty memorandum to address the arguments made in that submission. As soon as that memorandum is complete, the government will submit it to the United States Attorney for review and approval and, once it has been approved, will submit it to the Department of Justice for consideration.

In light of the fact that the remaining Group III defendants are on two different tracks, the government proposes dividing them into two groups for trial: Group III (Orellana-Torres, Herrera-Umanzor, Martinez, Espinal and Amaya) and Group V (Acosta-Yanes, Valle, Ruiz, Villatoro and Calderon). Because the death penalty decisions will be made with respect to the Group III

defendants well before the decisions for the Group V defendants, the government intends to try the Group III defendants first.

Further, the government proposes rejoining the Group III defendants with the defendant Adalberto Ariel Guzman, the remaining Group IV defendant, for a trial scheduled to begin on September 10, 2012.<sup>1</sup> As an initial matter, Martinez and Guzman both are charged in connection with offenses stemming from the February 5, 2010 murder of Vanessa Argueta.<sup>2</sup> See Fourth Superseding Indictment, Counts 1-2, Racketeering Act 13, Counts 35-38. Moreover, there is substantial overlapping evidence against all of the Group III defendants and Guzman, including voluminous enterprise evidence, firearms and ballistics evidence, telephone and cell site records, and numerous civilian witnesses, law enforcement witnesses, and cooperating defendants. For example, the government recorded numerous consensual telephone conversations between a confidential informant (the "CI") and Orellana-Torres, Herrera-Umanzor and Guzman, respectively, which conversations will be introduced into evidence at trial. Moreover, the CI also will provide testimony against all of the Group III defendants and Guzman regarding their participation in the Argueta, Torres, Moreno and Quijada murders. Still further, the same murder weapon, a .22 caliber semi-automatic handgun: (1) was used by Guzman, Martinez and their co-conspirators to murder Argueta and Torres; (2) was used by Martinez, Espinal and their co-conspirators to murder Nestor Moreno; and (3) was attempted to be used by Martinez, Amaya and their co-conspirators to murder Mario Quijada, and was recovered at the scene of the Quijada murder.<sup>3</sup> Thus, combining the Group III defendants and Guzman for trial in September 2012 would serve a number of important interests, including ensuring the defendants' and the public's interest in a speedy trial and conserving judicial

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<sup>1</sup> Following the Third Superseding Indictment in March 2011, the Court had divided Guzman and co-defendant Rene Mendez Mejia into a separate trial group. Unlike the other defendants charged with murder, Guzman and Mejia were not eligible for the death penalty because they were less than 18 years-old at time of the murders. See 18 U.S.C. § 3591. Mejia pled guilty and Guzman had been scheduled for trial in February 2012. However, due to a change of defense counsel, Guzman's trial was adjourned until September 2012.

<sup>2</sup> Guzman is also charged with the murder of Diego Torres, which was committed at the same time as the Argueta murder.

<sup>3</sup> The MS-13 members attempted to shoot Quijada, but when the gun jammed, they stabbed him to death with a machete and knives.

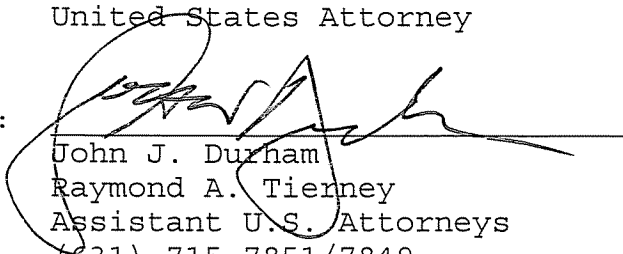
resources, rather than conducting separate, lengthy trials where substantially overlapping evidence would be introduced. Further, a joint trial would not only promote efficiency, but it would also "serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts." Zafiro v. United States, 506 U.S. 534, 537 (1993) (citations omitted). Therefore, the government respectfully requests that the Court rejoin the Group III defendants and Guzman for trial in September 2012.

Finally, the government requests that the Court schedule the trial of the Group V defendants for a date convenient to the Court and defense counsel in early 2013.

Respectfully submitted,

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By:



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cc: All Counsel of Record (By ECF)  
Clerk of the Court (JFB) (By ECF)